

Attachment A

TITLE 38 APPEALS PENDING WITH THE FCC

Title 38 Appeals

- Consolidated Request for Review of the Decisions of the Universal Service Administrator, DeSoto Parish School Board and Tensas Parish School Board, CC Docket No. 02-6 (filed July 27, 2004).
- Consolidated Request for Review of the Decisions of the Universal Service Administrator Regarding the Denials of Bienville Parish School District's Funding Requests and Madison Parish School District's Funding Requests, CC Docket No. 02-6 (filed August 17, 2004).
- Consolidated Request for Review of the Decisions of the Universal Service Administrator, Caldwell Parish School District, Catahoula Parish School District, Claiborne Parish School District, Concordia Parish School District, Franklin Parish School District, Lincoln Parish School District, Webster Parish School District, and Winn Parish School District, CC Docket No. 02-6 (filed August 23, 2004).

Title 38 / "Similarities" Consolidated Appeal¹

- Consolidated Request for Review of Decisions of the Universal Service Administrator, Morehouse Parish School District and Richland Parish School District, CC Docket No. 02-6 (filed August 23, 2004).

¹ USAC's alleged "similarities" claim with regard to some of Morehouse's and Richland's funding requests is refuted in Morehouse's and Richland's August 23, 2004 Request for Review and a December 10, 2004 ex parte filed by counsel to SEND Technologies, LLC. *See* Letter from J. Richter, counsel to SEND Technologies, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 10, 2004).

Attachment B



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

NOV 23 2004

Opinion Number 04-0275

Mr. Kenneth F. Sills, Attorney
Louisiana School Boards Association
P.O. Box 65236
Baton Rouge, LA 70896

Dear Mr. Sills:

On Behalf of the Louisiana School Boards Association ("Association") you have requested the opinion of this office on the applicability of the Louisiana Public Bid Law to the award of certain contracts by the Association in connection with their participation in the E-rate program sponsored by the Federal Communications Commission ("FCC"). Specifically, you refer to the procurement of Internet access services and/or internal connections by the Association. You also ask whether the Parish School Board ("PSB") may purchase equipment that is on the State bid list without advertising for bids.

Your request included summaries of purchases by the various members of the Association and correspondence from Universal Service Administrative Company ("USAC"), the administrator of the E-rate program. The opinion request states that the E-rate program was implemented by the Federal Communications Commission ("FCC") to fulfill its statutory mandate to assist schools and libraries in obtaining affordable telecommunications and Internet services. The E-rate program funds three service categories for schools and libraries: (1) telecommunications services; (2) Internet access; and (3) internal connections. Your request further states that 14 Louisiana public school boards (the "PSBs") participated in the E-rate program by seeking funding for services classified as "Internet access" or internal connections under the program. The funding requests differed from school to school but basically ranged from Internet access service only to a combination of Internet access, maintenance and technical support services, and the purchase and installation of related equipment or wiring. You state that the maintenance services, equipment and wiring are designated under the E-rate program as part of "internal connections."

In connection with the acquisition of Internet access services and/or internal connections, each school submitted a bid request (Form 470) to the Schools and Libraries Division ("SLD") which was then posted on the Universal Service Administrative Company ("USAC") website for 28 days, seeking competitive bids for Internet access and/or internal

connections. This posting and seeking of competitive bids was done in compliance with FCC and SLD/USAC rules and regulations. After the running of the 28 day advertisement period the PSB reviewed all responsive proposals and entered into a contract with the selected service provider. The selection was then submitted to SLD who reviewed the award process and thereafter issued a funding commitment decision either granting or denying the funding request. In the case of the funding requests of the 14 PSBs the SLD denied the funding request stating that the PSBs did not comply with Sections 2212 and 2212.1 of Title 38 of the Louisiana Revised Statutes (the Louisiana Public Bid Law). An appeal to the USAC was taken with the USAC denying the appeal and upholding the funding denial finding that while the PSBs may have violated R.S. 38:2212 and 2212.1 the PSBs clearly violated the public bid law provisions relating to Telecommunications and Data Processing Procurement by Political Subdivisions (R.S. 38:2234-2237.)

The USAC concluded in its ruling that Louisiana state law requires either an RFP or other competitive bidding process in the procurement of telecommunications and data processing equipment, systems, or related services. The USAC stated in its decision that for contracts solely for services, but where such services are provided in connection with related non-leased equipment, an RFP or other competitive bidding procedure is required for both the services and equipment together. For contracts solely for services the USAC concluded that an RFP is required pursuant to Louisiana law expressly governing the purchase of telecommunications services.

The PSBs argue that the provisions of R.S. 38:2234-2237 are not applicable because Internet access services and internal connections are not included in the scope of the statutory coverage and, in the alternative, the competitive bid procedures undertaken by the PSBs satisfy the requirements of the statute.

Under the Public Bid Law, contracts for public works projects costing \$100,000 or more must be advertised and let by contract to the lowest responsible and responsive bidder. Public works means the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity. LSA-R.S. 38:2212(1)(a) & (d) and 38:2211(11).

However, public works contracts that are estimated to cost less than the contract limit of \$100,000 are not subject to the advertisement and bidding requirements of the Public Bid Law and may be negotiated with one or more contractors or undertaken by the public entity with its own employees. LSA-R.S. 38:2212B.

To determine if the public works contract exceeds the \$100,000 contract limit, the public entity must add together the total cost of materials that will go into the project, the wages and benefits which will be paid to the employees used in the project, the cost of supervision and administrative overhead not to exceed fifteen percent, and the rental value of the

owned equipment which will be used as per the rates in the latest edition of the Association Equipment Dealers Rental Book.

Contracts for the purchase of material and supplies exceeding \$20,000 must be advertised and let by contract to the lowest responsible and responsive bidder. Contracts for purchases of materials and supplies costing \$10,000 or more, but less than \$20,000, must be made by obtaining no fewer than three telephone or fax quotations on the same specifications for the desired purchase. R.S. 38:2212.1A(1)(a) & (b). There are no provisions which set forth procurement requirements for smaller purchases.

While the 14 School Boards are subject to the Louisiana Public Bid Law when contracting for public works and for the purchase of materials and supplies, our courts have held that contracts for services, professional or otherwise, are not subject to the requirements of that statute. *Lafourche Parish Water District No. 1 v. Carl Heck Engineers, Inc.* (La.App. 1st Cir. 1977) 346 So.2d 769; *BFI, Inc. v. City of Monroe* (La.App. 2d Cir. 1985) 465 So.2d 882.

LSA-R.S. 38:2310(7) provides a definition of "Professional services" under Part VII. Selection of Professional Services for Public Contracts. This section relates to professional service contracts sought by State Agencies and sets up a specific method and procedure for the selection of architects, engineers, and landscape architects. This provision does not apply to political subdivisions such as a school board and therefore no limitation exists on the type of service agreement a school board may negotiate.

The USAC decision interpreted R.S. 38:2234-2237 to require either an RFP or other statutory bid procedure for all telecommunication and data processing procurements even if the procurement does not require bidding as a public work or a material and supply pursuant to R.S. 38:2212 and 2212.1. The Telecommunications and Data Processing Procurement provisions of the Public Bid Law (R.S. 38:2234-2237) clearly state that the use of an RFP for telecommunication and data processing procurements is an alternative to the required bid procedures set forth in R.S. 38:2212 and 2212.1. Its use is optional and not mandatory for the otherwise required bidding of materials and supplies that fall within the definition of telecommunications and data processing. In other words, a purchase of materials and supplies that would otherwise be subject to the bidding requirement of R.S. 38:2212 or 38:2212.1 may, if classified as telecommunications or data processing, be procured pursuant to the provisions of 38:2234-2238. If the procurement is not required to be bid pursuant to the general bid law (R.S. 38:2212 and 38:2212.1) then the Telecommunication and Data Processing Procurement provisions are optional, not mandatory.

Thus it must first be determined whether the proposed procurement is for public works projects, for the purchase of materials and supplies or for the procurement of services. For example, a purchase of an existing, commercially available software package (with an

accompanying license for its use), the development of a computer software program or the modification, enhancement, or customization of existing computer software would be a purchase of materials and supplies and therefore subject to the public bid law but a contract to install, provide connectivity to or for, support or maintain computer software is a contract for services not subject to the public bid requirements. See Attorney General Op. No. 04-0264.

While it would appear that the procurement of Internet access and internal connections would be contracts for services not subject to the bid law a fact specific analysis is required. Each procurement must be individually evaluated to determine if the Public Bid Law applies and if so, whether the contract is for a public works project or is for the purchase of materials and supplies. If for a public works project that exceeds \$100,000.00 then the public bid law applies. If the procurement is for materials and supplies and consists of telecommunications or data processing equipment that exceeds the statutory threshold then the procurement must either be made pursuant to R.S. 38:2212.1 or R.S. 38:2234-2237. If the procurement is for a service, professional or otherwise, then the contract may be negotiated with one or more contractors, purchased through the formal bid process or procured through a request for proposal process. A request for proposals process similar to that described in LSA-R.S. 38:2234 et seq. would be a legally acceptable procurement method of selecting a contractor who is providing these services. See Atty. Gen. Op. No. 02-0152 (A "request for proposals" is a valid method to evaluate potential maintenance service contractors, giving weight to factors in addition to cost). See Atty. Gen. Op. No. 95-269 (School Board may purchase computer software by means of a Request for Proposals in compliance with the requirements of R.S. 38:2237...) The posting of the bid proposal on the USAC website would certainly appear to be an acceptable process that would assure a competitive bid process.

Your last question relates to whether the Public School Boards may purchase equipment off the state bid list without advertising for bids. LSA-R.S. 39:1702A(1) provides the authority for political subdivisions to purchase equipment through existing state contracts. LSA-R.S. 39:1702A(1) states as follows:

1702A.(1): Any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any supplies, services, major repairs, or construction with one or more public procurement units or external procurement activities or one or more private procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include but is not limited to joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.


Thus, a political subdivision such as a Public School Board, may issue an equipment purchase order to the vendor who holds the state contract for the equipment as long as the purchase is for the same product at the same or lower price. Also see AG Op. Nos. 90-582 and 93-129.

This office is therefore of the opinion that a public works contract that exceeds the contract limit in LSA-R.S. 38:2211A(1)(d) is subject to the advertising and bidding requirements of the Louisiana Public Bid Law. A contract for the procurement of materials and supplies that exceeds the contract limits of LSA-R.S. 38:2212.1A(1)(a) and which constitute telecommunications or data processing purchases must be procured either through the formal bid process set forth in R.S. 38:2212.1 or through a request for proposals provided in R.S. 38:2234-2237. A contract for services, professional or otherwise, is not subject to the Public Bid Law requirements but may be may be procured by means of a Request for Proposals. It is also our opinion that a political subdivision may use La. R.S. 39:1701A(1) to make equipment purchases through existing state contracts without being subject to further bid.

We trust this answers your inquiry. Please advise if we may be of further assistance to you in this matter.

Yours very truly,

CHARLES C. FOTI, JR.
Attorney General

BY: 
RICHARD L. MCGIMSEY
Assistant Attorney General

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Attachment C

School Parish #1 (Lincoln)

Description of Services Requested by Schools:

On November 1, 2001, the PSB (public school board) submitted a bid request (FCC Form 420), posted on USAC's website for 28 days, seeking competitive bids for Internet access service for 20 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 20 schools, Internet centralized e-mail support bundled with the Internet access, and school level networking support services for Internet service.

Specific Request with Dollar Amounts:

Internet Access Service:	\$94,800
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Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to Internet access services because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, service contracts do not fall under Title 38. (AG Opinion at 3). Lincoln did not violate any state procurement requirements when it sought bids for Internet access service through the E-rate Program.

School Parish #2 (DeSoto)

Description of Services Requested by Schools:

On November 16, 2001, the PSB submitted a bid request (FCC Form 470), posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 17 school sites in the parish. The Internet access service requested by the PSB included Internet access and e-mail for schools. The PSB also requested internal connections for 5 individual schools including individual maintenance and services agreements for each school site to provide technical services and support for software maintenance and periodic updates of server, router, switch and related equipment.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$51,480
(2) Internal Connections:	
Network equipment maintenance contract (Individual request for each of 5 school sites)	\$ 6,000

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to Internet access or maintenance services because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access and maintenance services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4). Accordingly, DeSoto did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.

School Parish #3 (Franklin)

Description of Services Requested by Schools:

On October 10, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 11 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 11 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections including network equipment maintenance for six schools including Internet network support and installation services.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$112,200
(2) Internal Connections for each of 6 school sites:	
Network equipment maintenance contract	\$ 6,000

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to Internet access or maintenance services because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access and maintenance services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4). Accordingly, Franklin did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.

School Parish #4 (Morehouse)¹

Description of Services Requested by Schools:

On October 10, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 17 school sites in the parish. In addition, the PSB advertised the request three times. The Internet access service requested by the PSB included high speed T1 access for 17 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections including individual contracts for network equipment maintenance for Internet access and onsite technical support for each of the 17 school sites, and Category 5 (CAT 5) network wireplan maintenance for each school site.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$104,400
(2) Internal Connections for each of 15 school sites:	
(a) Network equipment maintenance contract	\$ 3,400
(b) CAT 5 network wireplan maintenance	\$ 2,625

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to Internet access or maintenance services because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access and maintenance services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4). Accordingly, Morehouse did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.

¹ USAC denied Morehouse's funding requests for Internet access and internal connections based upon perceived "similarities" between its Form 470 application and the Form 470 applications submitted by other Louisiana schools, rather than on Title 38 grounds. Although there is no material difference between the Internet access service and internal connections Morehouse sought and the Internet access services and internal connections sought by the other Schools, USAC in its denials fails to explain why it did not allege a Title 38 violation in Morehouse's case. For completeness, Morehouse's funding requests for Internet access service and internal connections are incorporated into this analysis.

USAC's alleged "similarities" claim is refuted in Morehouse's and Richland's August 23, 2004 Request for Review and a December 10, 2004 ex parte filed by counsel to SEND Technologies, LLC. *See* Consolidated Request for Review of Decisions of the Universal Service Administrator, Morehouse Parish School District and Richland Parish School District, CC Docket No. 02-6 (filed August 23, 2004); Letter from J. Richter, counsel to SEND Technologies, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 10, 2004).

School Parish #5 (Richland)

Description of Services Requested by Schools:

On October 12, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 14 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 14 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also made separate requests for internal connections including wireplan maintenance for several sites and onsite technical support.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$72,180
(2) Internal Connections for each of the 11 school sites:	
Network equipment maintenance contract	\$ 6,000

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to Internet access or maintenance services because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access and maintenance services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4). Accordingly, Richland did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.²

² USAC denied Richland's funding request for internal connections based upon perceived "similarities" between its Form 470 application and the Form 470 applications submitted by other Louisiana schools, rather than on Title 38 grounds. USAC, however, denied Richland's request for Internet access service based upon Title 38, not similarities. Although there is no material difference between the internal connections Richland sought and the internal connections sought by the other Schools, USAC in its denials fails to explain why it did not allege a Title 38 violation in this case. For completeness, Richland's funding request for internal connections is incorporated into this analysis.

As noted *supra*, USAC's alleged "similarities" claim is refuted in Morehouse's and Richland's August 23, 2004 Request for Review and a December 10, 2004 ex parte filed by counsel to SEND Technologies, LLC. *See id.*

School Parish #6 (Bienville)

Description of Services Requested by Schools:

On November 13, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 11 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 11 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections and minor product purchases. The PSB sought a contract for materials and labor to install Category 5 (CAT 5 Drop Installations) network wiring for 10 school sites in the parish, maintenance services for 2 Cisco network routers (Cisco 3640 and Cisco 1600) that route Internet access service to the PSB's central site and the schools; an uninterruptible power supply (APC UPS 1400) as battery backup for the servers and routers that support the Internet access service to all school sites; and joint school level maintenance for Internet access services including on-site maintenance and technical support for 11 school sites.

Specific Requests with Dollar Amounts:

(1)	Internet Access Service	\$94,400
(2)	Internal Connections	
	(a) CAT 5 Drop Installations	\$15,000
	(b) Cisco 3640 Maintenance	\$ 950
	(c) Cisco 1600 Maintenance	\$ 2,160
	(d) APC UPS 1400	\$ 6,600
	(e) Router and Network Installation and Maintenance	\$62,400

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to the Internet access, maintenance or installation services listed above because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access, maintenance and installation services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4).

Bienville's internal connections contracts also include materials and labor to install a CAT 5 Drop, which is a "public work" because it is an improvement or alteration to a public facility. The competitive bidding requirements of Section 2212 (or the alternative RFP process set forth in Section 2237) apply only to public works projects valued at \$100,000 or more. Because the CAT 5 Drop installation in this case is valued at \$15,000, it does not meet the threshold that triggers state procurement requirements. (AG Opinion at 2-3.)

Bienville's internal connections contracts also include the purchase of an uninterruptible power supply (APC UPS 1400) as a battery backup for the School's servers and routers, which is a "material and supply." The competitive bidding requirements of Section 2212.1 (or the alternative RFP process set forth in Section 2237) apply only to materials and supplies costing \$7500 or more. Because the power supply in this case is valued at \$6,600, it does not meet the threshold that triggers state procurement requirements. (AG Opinion at 3.)

Accordingly, Bienville did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.

School Parish #7 (Caldwell)

Description of Services Requested by Schools:

On October 10, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 7 school sites in the parish. The PSB requested high speed Internet access service and email support for all schools including support for Internet installation and setup in each school. The PSB also requested internal connections and minor product purchases. The PSB sought individual contracts for school level maintenance, upgrades and support for Internet access for each of the 7 sites; an uninterruptible power supply for emergency power / battery back-up for the Internet router in each school (APC UPS#SU1400RMU); and mini hubs / switches for each school to allow shared Internet access to multiple computers without additional wiring upgrades.

Specific Requests with Dollar Amounts:

(1) Internet Access Service	\$61,560
(2) Internal Connections for each of 7 school sites:	
(a) Network Equipment Maintenance Contract	\$ 3,000
(b) APC UPS#SU1400RMU (for router)	\$ 651
(c) Mini-switch, generic 5 port	\$ 225

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to the Internet access or maintenance services listed above because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access and maintenance services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4).

Caldwell's internal connections contracts include the purchase of an uninterruptible power supply (APC UPS#SU1400RMU) as a battery backup for the School's router and a mini-switch, both of which are "materials and supplies." The competitive bidding requirements of Section 2212.1 (or the alternative RFP process set forth in Section 2237) apply only to materials and supplies costing \$7500 or more. Because the power supply and mini-switch in this case are valued at \$651 and \$225, respectively, they do not meet the threshold that triggers state procurement requirements. (AG Opinion at 3.)

Accordingly, Caldwell did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.

School Parish #8 (Catahoula)

Description of Services Requested by Schools:

On December 6, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 11 school sites in the parish. The Internet access service requested by the PSB included high speed Internet access for 11 school sites, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections and minor product purchases. The PSB sought individual contracts for school level maintenance for Internet and network services and equipment for 11 sites; it sought the purchase and installation of central network switches for each of 11 schools sites (HP 4000 Switch) for the Internet access service; and it sought the purchase and installation two battery backup units at each school site to provide enhanced speed throughput for Internet traffic and backup power for the Internet routers (APC 1400 UPS).

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$69,780
(2) Internal Connections for each of the 11 school sites:	
(a) Network Equipment Maintenance Contract	\$ 3,000
(b) HP 4000 Switch or equivalent	\$ 1,640
(c) APC 1400 UPS	\$ 1,100

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to the Internet access or maintenance services listed above because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access and maintenance services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4).

Catahoula's internal connections contracts include the purchase of two uninterruptible power supplies (APC 1400 UPS) as a battery backup for the School's routers and a switch at 11 sites, all of which are "materials and supplies." The competitive bidding requirements of Section 2212.1 (or the alternative RFP process set forth in Section 2237) apply only to materials and supplies costing \$7500 or more. Because the power supplies and switches for each site in this case are valued at \$1,640 and \$1,100, respectively, they do not meet the threshold that triggers state procurement requirements. (AG Opinion at 3.)

Accordingly, Catahoula did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.

School Parish #9 (Claiborne)

Description of Services Requested by Schools:

On December 17, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 13 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 13 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections and minor product purchases. The PSB sought a single, shared contract for school level technical support and maintenance for Internet services for all 13 school sites, and installation of Category 5 (CAT 5) network wiring, including materials and labor, for 3 schools in the PSB.

Specific Requests with Dollar Amounts:

(1) Internet Access Service	\$82,080
(2) Internal Connections:	
(a) Network equipment maintenance contract	\$30,000
(b) CAT 5 installation per construction (Homer High)	\$ 9,375
(c) CAT 5 installation per construction (Homer Jr)	\$ 9,375
(d) CAT 5 Installation per construction (Homer Elem)	\$13,125

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to the Internet access or maintenance services listed above because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access and maintenance services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4).

Claiborne's internal connections contracts include materials and labor to install a CAT 5 Drop at three sites, which are "public works" because they are improvements or alterations to public facilities. The competitive bidding requirements of Section 2212 (or the alternative RFP process set forth in Section 2237) apply only to public works projects valued at \$100,000 or more. Because two of the CAT 5 Drop installations in this case are valued at \$9,375 and the third is valued at \$13,125, they do not meet the threshold that triggers state procurement requirements. (AG Opinion at 2-3.)

Accordingly, Claiborne did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.

School Parish #10 (Madison)

Description of Services Requested by Schools:

On October 8, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 8 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 8 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections and minor product purchases including purchase and installation of mini hubs / switches for each school to allow shared Internet access to multiple computers without additional wiring upgrades, and shared maintenance services and technical support for Internet access to all 8 school sites.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$82,680
(2) Internal Connections:	
(a) Mini-hubs, 5 port generic (50)	\$ 2,750
(b) Mini-hubs, 8 port generic (50)	\$ 4,250
(c) Network equipment -- installation and maintenance	\$62,500

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to the Internet access, maintenance or installation services listed above because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access, maintenance and installation services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4).

Madison's internal connections contracts include the purchase of 50 5-port and 50 8-port mini-hubs, which are "materials and supplies." The competitive bidding requirements of Section 2212.1 (or the alternative RFP process set forth in Section 2237) apply only to materials and supplies costing \$7500 or more. Because the 5-port and 8-port mini-hubs in this case are valued at \$2,750 and \$4,250, respectively, they do not meet the threshold that triggers state procurement requirements. (AG Opinion at 3.)

Accordingly, Madison did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.

School Parish #11 (Tensas)

Description of Services Requested by Schools:

On October 10, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 7 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 7 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also made requests for internal connections and minor product purchases including a joint request for network maintenance service for the Internet services for all 7 school sites, onsite technical support, and the purchase and installation of switch upgrades for enhanced network and Internet services (Nortel 350).

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$76,080
(2) Internal Connections:	
(a) Network Equipment maintenance contract	\$31,200
(b) Nortel 350 – 24 port switches or equivalent (6 @ \$1,370)	\$ 8,220
(Purchased under state bid list.)	

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to the Internet access or maintenance services listed above because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access and maintenance services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4).

Tensas' internal connections contracts include the purchase of six 24-port switches (to be installed at six sites), which are "materials and supplies." The competitive bidding requirements of Section 2212.1 (or the alternative RFP process set forth in Section 2237) apply only to materials and supplies costing \$7,500 or more. Because the switches in this case are valued at \$8,220, they meet the \$7,500 threshold that triggers state procurement requirements. (AG Opinion at 3.) As noted above, Tensas sought bids by following USAC's competitive bidding process of advertising its procurement requests on-line and seeking out the lowest cost service provider. Tensas' compliance with USAC's competitive bidding requirements fulfilled any state competitive bidding requirements under Section 2212.1. The AG agreed that "the posting of the bid proposal on the USAC website would certainly appear to be an acceptable process that would assure a competitive bidding process." (AG Opinion at 4).

Accordingly, Tensas did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.

School Parish #12 (Webster)

Description of Services Requested by Schools:

On November 9, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 23 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 23 school sites, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also made requests for internal connections and product purchases including, for 2 school sites, purchasing, installing and maintaining telephone switches (not including telephone sets) in each location which included re-cabling buildings and installation of components. The telephone switches were purchased by the PSBs under the Louisiana State bid list. For each school site, the PSB made individual requests for network equipment maintenance including maintenance of servers, wiring, routers, hubs, switches, and related equipment for Internet access service at each location. The PSB also requested installation of switches in each school location (Nortel Baystack 450) to enhance Internet performance, and the purchase and installation of an uninterruptible power supply in each school location (APC UPS #SU1400RM2U) to provide protection to the router and central switch for Internet access.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$130,980
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(2) Internal Connections:	
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(a) Nortel Networks telephone switch (Minden)	\$ 18,255
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(b) Nortel Networks telephone switch (Springhill Jr)	\$ 15,030
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 (Both bought pursuant to the Louisiana State bid list)

For each of 22 school sites, the PSB requested:

(c) Network Equipment Maintenance Contract	\$ 4,000
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(d) Nortel Baystack 450 or equiv. 24 port switch	\$ 1,370
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(e) APC UPS #SU1400RM2U (for router)	\$ 651
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Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to the Internet access or maintenance services listed above because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access and maintenance services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4).

Webster's internal connections contracts include the purchase of two larger telephone switches, and for 22 separate sites a 24-port switch and an uninterruptible power supply (APC UPS

#SU1400RM2U), which are “materials and supplies.” The competitive bidding requirements of Section 2212.1 (or the alternative RFP process set forth in Section 2237) apply only to materials and supplies costing \$7500 or more. Because the power supplies in this case are valued at \$14,322 (\$651 each), they meet the \$7,500 threshold that triggers state procurement requirements. (AG Opinion at 3.) As noted above, Webster sought bids by following USAC’s competitive bidding process of advertising its procurement requests on-line and seeking out the lowest cost service provider. Webster’s compliance with USAC’s competitive bidding requirements fulfilled any state competitive bidding requirements under Section 2212.1 for the power supplies. The AG agreed that “the posting of the bid proposal on the USAC website would certainly appear to be an acceptable process that would assure a competitive bidding process.” (AG Opinion at 4).

The two larger switches are each valued at \$18,255 and \$15,030, respectively, and the 24-port switches are valued at \$30,140 (\$1,370 each). Each of these purchases meets the \$15,000 threshold that triggers Title 38 procurement requirements. The AG opined that equipment purchases can be made through existing state contracts without being subject to further state bidding requirements under Title 38. (AG Opinion at 4-5). In this case, the two larger telephone switches and the 24-port switches were purchased pursuant to the state bid list. Accordingly, they are not subject to additional Title 38 bidding requirements. (Webster also complied with USAC’s competitive bidding requirements with regard to these switches.)

Accordingly, Webster did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.

School Parish #13 (Winn)

Description of Services Requested by Schools:

On December 5, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 12 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 12 school sites, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also made requests for internal connections and product purchases including for 10 of the school sites, separate requests for school level maintenance for Internet service and on-site technical support and a complete overhaul of the internal wiring for each site including installation of new Category 5 network wiring, labor and materials.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$51,480
(2) Internal Connections:	
(a) Network router, server, switch -- maintenance for each of 10 sites	\$ 3,000
(b) School wireplan installation per quote (Atlanta Elem & High)	\$24,190
(c) School wireplan installation per quote (Calvin Elem & High)	\$18,440
(d) School wireplan installation per quote (Dodson Elem & High)	\$18,480
(e) School wireplan installation per quote (Winnfield Intermed)	\$12,072
(f) School wireplan installation per quote (Winnfield Kind.)	\$ 6,583
(g) School wireplan installation per quote (Winnfield Middle)	\$17,705
(h) School wireplan installation per quote (Winnfield Primary)	\$ 9,506
(i) School wireplan installation per quote (Winnfield Senior)	\$13,118
(j) School wireplan installation per quote (Kindergarden Annex)	\$18,798
(k) School wireplan installation per quote (District Shared)	\$ 3,459

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to the Internet access or maintenance services listed above because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access and maintenance services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4).

Winn's internal connections contracts include materials and labor to overhaul the internal wiring at ten sites, each of which is a "public work" because each is an improvement or alteration to a public facility. The competitive bidding requirements of Section 2212 (or the alternative RFP process set forth in Section 2237) apply only to public works projects valued at \$100,000 or

more. Because the inside wiring projects in this case range in value from \$3,459 to \$24,190, they do not meet the threshold that triggers state procurement requirements. (AG Opinion at 2-3.)

Accordingly, Winn did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.

School Parish #14 (Concordia)

Description of Services Requested by Schools:

On November 29, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 12 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 12 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections and minor product purchases for individual schools as detailed below. The individual requests for each school included maintenance service contracts, technical service and support for PSB Internet access equipment and telephone switches in each of the 12 schools; purchase, installation, and maintenance of network servers (36 GB SCSI Seagate Baracuda, for Dell Server), memory upgrades for such servers (256 MB upgrade for Dell Server); and installation of fiber optic modules or links, including construction, materials and labor, to upgrade the Internet network between building segments at selected school sites as described below in order to provide faster network speed.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$74,880
(2) Different Internal Connections requests were made for each school as follows:	
(a) Network & Telephone Maintenance Contract	\$ 3,000
(b) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(c) 256 MB upgrade for Dell Server	\$ 135
Total – Ferriday Education Center	\$ 3,740
(d) Network & Telephone Maintenance Contract	\$ 3,000
(e) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(f) 256 MB upgrade for Dell Server	\$ 135
(g) Install fiber optics run; materials & labor (New Building)	\$ 1,950
(h) Install fiber optics run; materials & labor (Bus Ed Room)	\$ 3,100
Total – Ferriday High	\$ 8,970
(i) Network & Telephone Maintenance Contract	\$ 3,000
(j) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(k) 256 MB upgrade for Dell Server	\$ 135
(l) Install fiber optics run; materials & labor (Ed Annex)	\$ 4,300
Total – Ferriday Jr. High	\$ 8,040
(m) Network & Telephone Maintenance Contract	\$ 3,000
(n) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605

(o) 256 MB upgrade for Dell Server	\$ 135
(p) Install 3 fiber optics runs; materials & labor	\$ 5,560
Total – Ferriday Lower Elem	\$ 9,300
(q) Network & Telephone Maintenance Contract	\$ 3,000
(r) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(s) 256 MB upgrade for Dell Server	\$ 135
(t) Install 2 fiber optics runs; materials & labor	\$ 3,400
Total – Ferriday Lower Elem	\$ 7,140
(u) Network & Telephone Maintenance Contract	\$ 3,000
(v) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(w) 256 MB upgrade for Dell Server	\$ 135
(x) Install fiber optics run; materials & labor (lower wing)	\$ 2,700
(y) Install fiber optics run; materials & labor (upper wing)	\$ 2,700
(z) Install fiber optics run; materials & labor (new wing)	\$ 1,400
Total – Monterey Elem-High	\$10,540
(aa) Network & Telephone Maintenance Contract	\$ 3,000
(bb) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(cc) 256 MB upgrade for Dell Server	\$ 135
(dd) Install fiber optics run; materials & labor	\$ 1,100
Total – Ridgecrest Elem	\$ 4,840
(ee) Network & Telephone Maintenance Contract	\$ 3,000
(ff) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(gg) 256 MB upgrade for Dell Server	\$ 135
(hh) Install fiber optics run; materials & labor (wing)	\$ 1,600
(ii) Install fiber optics run; materials & labor (Library)	\$ 1,400
Total – Vidalia High	\$ 6,740
(jj) Network & Telephone Maintenance Contract	\$ 3,000
(kk) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(ll) 256 MB upgrade for Dell Server	\$ 135
(mm) Install fiber optics run; materials & labor (wing)	\$ 1,500
(nn) Install fiber optics run; materials & labor (Library)	\$ 1,700
(oo) Install fiber optics run; materials & labor (Library)	\$ 2,900
Total – Vidalia High	\$ 9,840
(pp) Network & Telephone Maintenance Contract	\$ 3,000
(qq) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(rr) 256 MB upgrade for Dell Server	\$ 135
(ss) Install fiber optics run; materials & labor (new wing)	\$ 2,300
(tt) Install fiber optics run; materials & labor (annex)	\$ 2,300
Total – Vidalia Lower Elem	\$ 8,340

(uu) Network & Telephone Maintenance Contract	\$ 3,000
(vv) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(ww) 256 MB upgrade for Dell Server	\$ 135
(xx) Install fiber optics run; materials & labor (new wing)	\$ 1,700
(yy) Install fiber optics run; materials & labor (2 wings)	\$ 1,300
Total – Vidalia Upper Elem	\$ 8,040
 (zz) Network & Telephone Maintenance Contract	 \$ 3,000
Total – PSB Service	\$ 3,000

Analysis:

Sections 2212, 2212.1 and 2237 of Title 38 do not apply to the Internet access or maintenance services listed above because these statutes apply to public works or the purchase of materials and supplies (including public works or materials and supplies for telecommunications and data processing systems). As the AG explained, Internet access and maintenance services are service contracts and thus do not fall under Title 38. (AG Opinion at 3-4).

Concordia’s internal connections contracts include materials and labor to install fiber optic cables at ten sites, each of which is a “public work” because each is an improvement or alteration to a public facility. The competitive bidding requirements of Section 2212 (or the alternative RFP process set forth in Section 2237) apply only to public works projects valued at \$100,000 or more. Because the fiber optic projects in this case range in value from \$1,100 to \$6,800, they do not meet the threshold that triggers state procurement requirements. (AG Opinion at 2-3.)

Concordia’s internal connections contracts also include the purchase of a network server and a memory upgrade for the server for 11 sites, which are “materials and supplies.” The competitive bidding requirements of Section 2212.1 (or the alternative RFP process set forth in Section 2237) apply only to materials and supplies costing \$7500 or more. Because the network service and memory upgrade for each site in this case are valued at \$650 and \$135, respectively, they do not meet the threshold that triggers state procurement requirements. (AG Opinion at 3.)

Accordingly, Concordia did not violate any state procurement requirements when it sought bids for Internet access service and internal connections through the E-rate Program.